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**Norms matter – but not only in the way they are supposed to:  
exploring unintended effects of international norms**

Paper prepared for the International Studies Association Convention 2011, Montreal, March 16-19,  
Panel „Compliance with International Law“

(-First draft – thank you for not quoting without my permission-)

**ABSTRACT** Although the phenomenon of unintended effects has been widely explored in other social science disciplines, the topic has only recently and sporadically found its way into the area of International Relations (IR). Some strands of IR theory are still completely silent on the issue: It seems that constructivist research on international norms has been so keen on emphasizing the potential for progress in international politics by showing that and how norms may positively influence the behavior of states that it has lost sight of their possibly ambiguous consequences. However, while in rather policy-oriented research, such effects of international governance processes have at least been diagnosed in some single case studies, there is still both a lack of theoretical and conceptual reflection on the phenomenon itself and the need for systematic empirical research. Mainly drawing on economic and sociological conceptualizations by Robert K. Merton and Raymond Boudon, the paper aims at helping to narrow these research gaps by 1) developing a taxonomy of unintended effects; 2) combining this scheme with insights from the literature on international norms to identify possible unintended effects of norms and 3) illustrating those effects with examples from the field of international humanitarian law.

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*“Norms are complicated. The better we understand them, the more difficult it is to find an acceptable solution” (Raskolnikov 2007: 684)*

## **INTRODUCTION: INTERNATIONAL NORMS AND THE BLIND SPOT OF UNINTENDED EFFECTS\***

Killing in war receives unquestioning acquiescence – as long as “only” soldiers are killed. As if being injured or killed by a weapon was not the problem, it is accepted as long as it occurs with “humane” weapons. Some prisoners of war are deprived of their rights by being excluded from the status of combatant. The latter is, however, attached to victims of targeted killings to justify this practice. How is all this possible in a legalized and civilized world, that is supposed to be held together by international norms? Looking for an explanation, in this paper I choose a perspective that might appear counterintuitive at first: Instead of interpreting these occurrences as instances of insufficient or breached international law, I want to consider how international law itself makes these occurrences possible – albeit unintentionally. Put differently, this paper is based on the assumption that the efficacy of international norms is not limited to their civilizing impact, usually pointed out in respective literature, but that norms also produce unintended effects, which can be traced, inter alia, in the examples given at the outset. Since unintended effects of international norms have not received much attention so far, this paper emphasizes their existence and presents some conceptual ideas about possible types of these effects.<sup>1</sup>

The concept of unintended effects may encompass a wide range of empirical phenomena – well-known examples being the emergence of a black market for alcohol as a result of the prohibition in the 1920s in the US, the incitement of imitators through media reports about school shootings and the ebb and flow in the numbers of certain professionals following labor market predictions. As this small selection of examples already shows, such effects are ubiquitous, occurring in different spheres and different levels of social life, following different causes and generated by different mechanisms. While Robert Merton’s (1936: 894) complaint “that not only has the substantial identity of the problem been overlooked, but no systematic, scientific analysis of it has yet been effected” surely can no longer be said to be generally true, given the multitude of illuminative studies conducted on this phenomenon, it still applies to the discipline of

\* I thank Elizabeth Boshold for language editing.

<sup>1</sup> This paper is work in progress from my PhD dissertation. While here, I limit myself to the conceptual framework supporting the identification of the effects of interest and a first illustration, the project’s overall aim is to explain the emergence of unintended effects of norms by pursuing the question how unintended effects of norms are possible.

International Relations<sup>2</sup> and even more to the constructivist research on international norms.

In IR, unintended effects are recognized at least sporadically, though mostly in passing and without further theorizing: For example, Oran Young mentions that “international regimes – like all other governance systems – also produce side effects” and gives several examples from environmental politics like the fact that the hunting ban on great whales has led to an increased hunting of other whales (Young 1994: 151, 146); Christopher Daase (2007: 10-11) considers the increased threat perception followed by disproportional anti-terrorism measures to be an unintended effect of international cooperation to fight terrorism; Michael Zürn et al. (2007: 130) view legitimacy problems of international institutions as an unintended effect of international governance; in a recent edited volume by Daase/Friesendorf (2010) several authors present cases of unintended effects in the realm of security, criminalizing effects of international sanctions (Andreas 2010) being one example. Concerning students interested in international norms, to my knowledge, Nina Tannenwald (2007: 47) is the only one, who at least points to the existence of unintended effects and briefly describes “permissive effects” as one special category.

Beyond this notice however, Tannenwald’s own focus lies on the emergence of the norm of nuclear non-use – a core research interest of the constructivist research program on international norms. This program has shown convincingly – both in terms of empirical evidence and theoretical explanation – how standards of appropriate behavior emerge and diffuse in the international realm, how actors subject to processes of socialization adapt their behavior according to these standards and how compliant behavior can be enforced in cases where it is lacking. By paying attention to these questions, students of international norms have placed themselves in the tradition of regime theory – however, they also substantially broadened and advanced the latter’s agenda by taking a sociological perspective on processes of international rule-setting and establishing the idea of socially embedded international actors that both shape and are shaped by the structure they are acting in.

I consider the characteristic features of the constructivist research program on international norms – namely its optimism and its belief in the progressive development of the international system – to be one reason explaining how the blind spot of unintended effects could emerge. In this view, international norms are legalized and institutionalized solutions to international problems that, via various mechanisms, guide the behavior of actors in the desired direction, thereby changing the international reality for the better. This perspective certainly encompasses an essential part of the effects international norms may and do have.

<sup>2</sup> Sporadically, however, IR scholars with unintended effects: Oran Young (1994: 146) mentions that international regimes may have some of them without

However, I agree with others that it also suffers from a “nice norms bias” (Finnemore/Sikkink 2001: 404, McKeown 2009: 7) and a “liberal belief in progress” (Brabandt 2011: 43, transl. ELR) which, I argue, has led to the neglect of unintended effects of norms.<sup>3</sup> While much efforts had to be spent to demonstrate the existence of an effective normative structure, such effects of that structure that might be considered unintended and undesired have received almost no attention so far. Both the IR constructivist bias towards norms and the lack of research on their unintended effects are surprising: The former considering (mainly sociological) critical writings on the coercive power of norms (e.g. Butler 1990), the latter considering the amount of theoretical/conceptual thoughts and empirical findings on unintended effects produced in other disciplines of the social sciences.

Aiming to begin to fill the identified lacuna, in this paper I combine the insights from literature on the types of unintended effects and the mechanisms of their emergence with insights from constructivist theory about the effects of norms to suggest a conceptualization of *unintended effects of norms* as a result. To illustrate my argument, I briefly discuss empirical examples from the field of International Humanitarian Law (IHL) for three such effects.

#### **DEVELOPING AN ANALYTICAL FRAMEWORK FOR UNINTENDED EFFECTS OF NORMS**

The following part consists of three steps: First, I review existing research on unintended effects to gain a first grasp of this phenomenon in terms of definition, different categories and mechanisms of occurrence. Second, I review existing research on the effects of international norms to understand how norms affect the behavior of actors. Third, I bring these two strands of literature together in order to identify (some) possible unintended effects of norms.

##### *Approaching the blind spot: defining unintended effects*

Unintended effects have played a role in some social science classics, Adam Smith’s “invisible hand”, Karl Marx’ and Max Weber’s self-destructing capacities of systems being prominent examples. It was Robert Merton, who, in 1936, suggested these cases to be different instances of the same phenomenon – of unintended consequences – and called for its systematic analysis. While Merton’s article about “The Unanticipated Consequences of Purposive Social Action” contains instructive descriptions and plausible examples, the author did not provide a definition, regarding the term “unanticipated consequences” to be “self-explanatory” (Merton 1936: 894). However, a first glance at the writings dealing

<sup>3</sup> Elsewhere, Sonja Schirmbeck and I have interpreted another blind spot as a result of the “nice norms bias”, namely the weakening or the erosion of norms (Rosert/Schirmbeck 2007); meanwhile, this phenomenon has been acknowledged by other scholars, too (McKeown 2009, Sandholtz/Stiles 2009: 7, Peterson/Panke 2010).

with this topic reveals some terminological fuzziness that is generated both by the use of synonyms for same phenomena and by the use of same terms for different phenomena – a problem that is, admittedly, quite common for social sciences. In the case under consideration here, the confusion arises mainly from the heterogeneous use of (different combinations of) the attributes “unanticipated”, “unintended” and “undesired”, but also from a number of further adjectives such as “paradox”, “regressive” or “contrary”. To dissolve the fuzziness for the sake of analytical precision, I take a closer look at the different terms used in this context and the meanings attached to them in the following paragraphs. I conclude by presenting a definition of unintended effects that I will use in this paper.

What are unintended effects, then? To label something as an unintended effect basically means to diagnose a discrepancy between the *result* of an action and the *intention* that guided this action, as Patrick Baert (1998: 201) suggests:

“By an unintended consequence, I refer to a particular effect of purposive action which is different from what was wanted at the moment of carrying out the act, and the want of which was a reason for carrying it out.”

Referring to institutional change, Andrew P. Cortell und Susan Peterson (2001: 772) define unintended effects as “those procedural or policy consequences that diverge from the intentions of the reformers”. Likewise, Hyunyi Cho and Charles T. Salmon (2007: 294) point into the same direction arguing that dealing with unintended effects means to be “mindful of the potential of the deviation of the outcome from its intention”.

To diagnose this deviation is far from being trivial, though, at least for two reasons: Neither is it easy to establish the causal connection between an action and its outcome nor is the action’s underlying intention necessarily obvious. The first problem emerges out of the difficulty to determine

“which events should be considered as (still) consequences of the previous event, given that effects are theoretically speaking not limited in time, and that, for certain phenomena at least, the further Y is away from X, the less obvious the link is between them” (Baert 1991: 202).

The second problem that arises from the concept of intentionality, which is, self-evidently, central for those interested in unintended effects, is even more demanding. The idea of intentionality implies a conception of a purposefully acting actor, guided by preferences and objectives (Merton 1936: 895, Schelling 1978: 17, Boudon 1979: 63). The intention of an action, thus, consists of two components: The objective the actor is striving to achieve and the belief that the concrete action is the right means to do so. To put it differently, one action’s intention lies in the achievement of the objectives addressed by the action – accordingly, effects *beyond* these objectives can be considered unintended. Multiple difficulties are linked to this concept: First, the question arises how to deal with the problem that one action may be guided by unconscious (Merton 1936: 896) or several intentions of an individual, and even more so of a collective

actor (Sieber 1981: 14, Baert 1991: 202)? Secondly, how to deal with the problem that the objectives of an action may change while it is executed (Corwin 1981: xv) or be reformulated to adapt to a new situation (Merton 1936: 897)? Such rationalisations in turn would mean that the reference point for the comparison between the intended and the achieved objectives is itself subject to change and make it difficult or even impossible to detect the initial intention (Baert 1991: 202). As a – to a measure surely dissatisfying – resort, I suggest to accept what is identified as intention to be the researcher’s interpretative hypothesis that, like every other interpretation, must be convincingly proven to be plausible.

After having defined unintended effects as deviations of an action’s outcome from its intention, a closer look at which forms these deviations might assume is in order. Along the question whether the initial objective has been achieved or not and which kinds of deviating outcomes have been produced, two effects are dominant in the literature: contrary effects and side effects. For contrary effects, a range of synonyms is used: regressive (Sieber 1981: 9), paradox (Boudon 1979), perverse (Adler 2001: 213), revenge (Tenner 1997: 7), and counterproductive or boomerang effects (Hadari 1989: 141, Jones Ringold 2002: 27). However, the term “contrary effects” seems best suited to me, because it is self-explanatory as it stands for outcomes that can be deemed as the opposite of the effect that was meant to achieve and thus, run contrary to the initial intention.<sup>4</sup> In other words, the actions that produce such effects are a special category of *ineffective actions* – meaning that not only the initial objective has been missed but also that the action has proven counterproductive. In contrast, the attestation of side effects (Locatis/Gooler 1975: 327, Sieber 1981: 9, Jervis 1997: 10) – also called secondary effects (Elster 1989: 97) or externalities (Young 1994: 151) – does not presume the ineffectiveness of the action that produced them: Rather, while the initial intention may still be fulfilled, the focus is here on effects that emerge *additionally* to the intended outcome or, if it is not fulfilled, *instead of* the intended outcome. Thus, what counts as a main and what as a side effect of an action cannot be determined on an objective material basis but arises out of its intention (Jervis 1997: 10, Aoi/de Coning/Thakur 2007: 11).

Another complex of terms that needs to be clarified are the adjectives “unanticipated”, “unintended” and “undesired”. It was Merton himself, who initiated the inconsistent use of these terms as well as gave some clues about how the terms might be related to each other: Occasionally, he seems to equate “unanticipated” and “unintended” and uses them interchangeably (e.g. Merton 1936: 895; 1968: 105). Then again, he asserts that the effects he is referring to might differ from the usual consequences of a certain action, but might

<sup>4</sup> To give one example: Amy Adler (2001) argues that legal efforts to combat child pornography have led to a large medial presence of the problem, which has increased the demand for child pornography as it has reproduced children as pornographic objects.

nevertheless have been anticipated (Merton 1936: 899). This suggests that he considers unanticipated effects to be a sub-category of unintended effects. Undesired effects seem to be another sub-category: Due to the semantic similarity of intention and desire, one can assume that intended effects necessarily are desired – positive – effects, when considered from the perspective of the same actors. However, the reverse conclusion – that unintended effects are necessarily undesired – does not hold, since an action can also produce positive results, although they were unintended: „In short, undesired effects are not always undesirable effects“ (Merton 1936: 895).

The tendency to treat unintended effects as the main category that encompasses unanticipated and undesired effects is supported by further literature, which has, however, also widened the terminological spectrum: Raymond Boudon (1979: 65) speaks of “paradox” instead of “unintended” effects and distinguishes them into anticipated and unanticipated. By noting that while the anticipated effects must not be necessarily avoidable, he introduces the idea of tacit acceptance of such unintended effects. This aspect is also stressed by Patrick Baert (1991: 203) who argues that “unintended consequences can be expected by the actors involved at the moment of carrying out the act“, and accordingly, criticizes the synonym use of unanticipated and unintended.<sup>5</sup> Concerning the desirability of such effects, there is a consensus in accordance with Merton that “unintended consequences need not to be undesired” (Jervis 1997: 65).<sup>6</sup> The opposite impression that “unintended effects usually are not desired” (Kane 1977: 57) can be seen as the result of the one-sided research focus on rather negative effects (Baert 1991: 203) that appear more relevant since they are harmful to society (Boudon 1972: 62, Aoi/de Coning/Thakur 2007: 6).

Linking these categories to the kinds of effects developed before allows for further specification. Since contrary effects by definition denote outcomes opposed to those that were intended, we can assume them to be undesired as well. However it is less clear whether these outcomes are also unanticipated: Whereas it is plausible to assume that an actor would not have taken an action had she foreseen its contrary effects, one also needs to take into account the risk inclination of actors – when the latter is high, actors might take certain actions despite the risk to achieve exactly the opposite of what they intend. With side effects, different plausible combinations are conceivable: desirable and anticipated (and still unintended since their anticipation alone would not have sufficed to

<sup>5</sup> These efforts for specification notwithstanding, some authors still continue to equate the terms. The education researcher Herrman/Fox/Boyd (2000: 40), focusing on dealing learning technologies, define the latter’s unintended effects as follows: “We see them as those effects (...) that are unforeseen by the individual group using them”; the economists Harris/Ogbonna (2002: 34), focusing on processes of cultural change in enterprises, choose a similar definition: “In the context of this study the term ‘unintended consequences’ is used to imply unforeseen or unpredicted results to an action (often negative in nature)”.

<sup>6</sup> Similarly Cortell/Peterson 2001: 772, Aoi/de Coning/Thakur 2007: 6, Cho/Salmon 2007: 297.

trigger the action); desirable, but unanticipated such as the invisible hand; undesired but anticipated, that is willingly tolerated; and neither desired nor anticipated.

		desirable	
		yes	no
anticipated	yes	“killing two birds with one stone”	“collateral damage”
	no	“pleasant surprise”	“rude surprise”

Different categories of side effects

### *How norms matter: constitutive and regulative effects and logics of action*

After having sketched out the definition of unintended effects and possible attributes to characterize them, in the following part I will focus on how international norms produce effects in general – before turning to the question what kinds of unintended effects might emerge from norms.

Demonstrating the efficacy of international norms – “collective expectations about proper behavior for a given identity” (Jepperson/Wendt/Katzenstein 1996: 54), as the standard constructivist definition reads – was the first challenge that the newly emerging constructivist paradigm tackled successfully so that “the once controversial statement that norms matter is accepted by all except the most diehard neorealists” (Checkel 1997: 473, similarly Price 2008: 193). This efficacy can be traced in three different effects: regulative effects denoting the production of norm-compliant behavior, constitutive effects denoting the production of categories and identities and structural effects denoting the production of a normative foundation of international politics (cf. Wiener 2004: 189). In the following, I focus on regulative and constitutive effects, since the largest part of literature is devoted to them, and subsequently comment on the notion of causality attached to norms.

Although – or maybe because – most works on international norms refer routinely to their regulative and constitutive as well as enabling and constraining effects, here too, we encounter a certain lack of conceptual clarity. Primarily, this pertains to the question what the effects are exactly and how they relate to each other. Additionally, there seems to be an uncertainty as to what the object of reference of the adjectives is: While for some authors, “constitutive” and “regulative” are different categories of *norms* (Raymond 1997: 214, Finnemore/Sikkink 1998: 891, Alderson 2001: 421), for others, “constitutive” and “regulative” are different categories of *effects* norms have (Risse 2000: 5, Price 2004: 110, Tannenwald 1999: 437). One might argue that whether a norm counts as regulative or as constitutive depends on whether the effects it produces are rather regulative or constitutive. However, I think it is misleading to speak of



constitutive and regulative norms implying that one deals with different kinds of norms, as I follow Nicholas Onuf (1998: 68), who argues that

“From a constructivist point of view, all rules are always constitutive *and* regulative at the same time. By definition, rules regulate the conduct of agents because rules are normative – they tell agents what they should do. Furthermore, the regulation of conduct constitutes the world within which such conduct takes place (...) Acting in the world means acting on the world”

Put differently, while norms can have regulative and constitutive effects – that also can occur sequentially, as Jeffrey T. Checkel (1997: 474) acknowledges when saying that „norms sometimes constrain and sometimes constitute“ – norms themselves cannot be either constitutive or regulative.

With regard to their nature, regulative effects are certainly those easier to grasp: speaking of these effects expresses the idea that norms have an impact on the behavior of the actors. Most constructivists are keen to stress that this is not intended to imply a deterministic causality between norms and behavior in the sense that a norm necessarily leads to a certain behavior, but rather that norms constrain or expand the actors' scope of action (Kratochwil/Ruggie 1986: 767, Klotz 1995: 461-462, Finnemore 1996a: 158).<sup>7</sup> To find a definition for constitutive effects is more demanding, since several effects are considered constitutive. Common to all of them is the idea that these effects emerge via processes of social construction: As Nicholas Onuf (1998: 68) puts it, norms can be considered a “medium of social control” due to their regulative efficacy, and as a “medium of social construction” due to their constitutive efficacy. To turn into such a medium, their power to *give meaning* to certain objects is crucial. In the respective literature, three categories of possible reference objects are mentioned: activities, things, and identities. As to activities, according to John Rawls (1955) and John R. Searle (1995: 43-50) norms do not only define which actions are allowed and permitted, but matter in a more fundamental way by determining what counts as a certain action (Ruggie 1998: 871) or, in other words, in which context a certain action acquires a certain meaning.<sup>8</sup> As to things, Andrew Latham (2000: 5-6) explains, using the example of weapons, how norms necessarily create (and are simultaneously based on) different categories by attaching a moral value to them – the latter being based on the historical-specific context rather than on “intrinsic properties of certain technologies”. As to identities, one core concept of constructivist research, norms are considered to be constitutive because they define and qualify, at least partly, who the actors are (Deitelhoff 2006: 45),

<sup>7</sup> It is remarkable, though, that only the constraining effects of norms are studied whereas the expanding and/or enabling effects are mentioned without being studied. Some more recent works (Flockhart 2006: 90, Sandholtz 2008: 104) have dissolved the conventional terminological couple of “constraining and enabling” and only refer to constraining effects.

<sup>8</sup> Searle (1995: 50) explains using the example of murder that while there is a regulative rule prohibiting killing, there is also a corresponding constitutive rule determining when killing counts as murder, which entails certain punishments.

meaning that it is necessary to obey certain norms both to assure oneself of one's own identity and to be recognized as a certain kind of actor by relevant others (Wendt 1992: 397, Jepperson/Wendt/Katzenstein 1996: 54). Obviously, constitutive and regulative effects are tied to each other in manifold ways and it is a chicken-or-egg question which of them precedes the other: On the one hand, the regulative efficacy of norms is necessary for constitutive effects to develop, since norm-compliant behavior may support the maintenance of an identity and (re)produce certain perceptions – meanings – of activities and objects. On the other hand, the constitutive efficacy of norms is necessary for regulative effects to develop since norm-compliant behavior may be motivated by a certain identity and require the knowledge what counts as a certain activity or object.

After this delineation of different effects norms can have on the identity and the behavior of actors the question remains *why* norms have these effects. While a detailed elaboration of the mechanisms explaining norm-guided behavior would exceed the scope of this paper, I will nevertheless briefly discuss the two logics of action commonly accepted to depict the actors' different motives to comply with (international) norms: the logic of consequences ascribed to the concept of *homo oeconomicus* and the logic of appropriateness ascribed to the concept of *homo sociologicus*. The first logic operates within the rationalist paradigm of a cost-benefit calculating actor, who, based on her preferences, chooses the course of action promising the highest benefit – her actions are thus motivated by the anticipated outcome (Coleman 1986: 1312, Elster 1989: 99) and can be “influenced by providing consequentialist incentives” (March/Olsen 1998: 949-950). Norms, in this paradigm, are an optimizing device facilitating collective action and increasing its benefits. They do so by restraining possible courses of conduct while announcing sanctions for deviation and rewards for compliance (Ullman-Margalit 1977: 187-188). Whereas a thin rationalist theory neglects the meaning of social structures and reduces incentives to material incentives, the rationalist paradigm also allows for a broader understanding of benefit including also non-material factors such as status, reputation and social recognition whose receipt depends on norm-compliant behavior (Akerlof 1980: 753-755, Bernheim 1994: 843).

Obviously, the logic of consequences is able to explain regulative effects of norms<sup>9</sup> but offers no account for constitutive effects. This is different with the logic of appropriateness, where society is no longer reduced to a further factor on the actor's utility function but is the power constituting the actors (Durkheim 1983 [1897]: 271): The *homo sociologicus* acts embedded within social structures and is motivated to abide by the norms that have become part of his self-image as a result of successful socialization (Elster 1989: 104, Alderson 2001: 417).

<sup>9</sup> Albeit not all of them, since it reaches its limits in those cases where the costs of norm-compliant behavior exceed its benefits.

Following the logic of appropriateness means to try “identifying the normatively appropriate behavior than on calculating the return expected from alternative choices“ (March/Olsen 1998: 949-950). Thus, the decision for a particular course of action requires the actors to reflect upon the situation they are in, who they are and what is appropriate for them in this situation (Sending 2002: 447). While, according to this logic, norms also have regulative effects since they apparently guide the behavior of actors, their constitutive effects also play a major role since the idea of appropriate behavior presupposes a concept of identity – both in terms of a self-image and a collective, social image of oneself. Norm-compliant behavior is considered appropriate and to act appropriately serves the multiple validation of one’s identity: It supports the actor’s self-image, it demonstrates that he belongs to a society and it assures the confirmation of the identity by the others (Cancian 1975: 137-139). Identity, hence, serves as a prism to integrate the concepts of norms and interests instead of treating them as rival explanations, since the actor’s interests are no longer assumed as given but as being constituted by norms as part of the identity formation and its reproduction.

#### *Conceptualizing unintended effects of norms*

As shown, norms function as providers of social order by guiding behavior and constituting the actors. While surely some of them emerge by convention, the literature on international norms has devoted much attention to processes of norm-setting strategically advanced by norm entrepreneurs (seminal Keck/Sikkink 1998). Since these processes represent a form of regulatory efforts (Oberthür 1996: 10), the latter understood as „any sort of deliberate effort to alter a human situation in some desired direction“ (Sieber 1981: 9), it seems promising to me to have a closer look at the research on unintended effects of regulation to take a further conceptual step to identify unintended effects of international norms.

First, the assumption of system complexity is relevant here: Following it, regulatory efforts happen in social structures consisting of different interdependent systems (intersystemic interaction), and changing continuously in response to different interventions (interaction between systems and interventions) (Münch 1996: 234, Jervis 1997: 68-70). Accordingly, it is never possible to limit the effects of a regulatory measure and to control its side effects, as “we can never do merely one thing” (Hardin 1969: 292, quoted in Jervis 1997: 10). Furthermore, anticipating the effects of a certain regulatory intervention is difficult due to systemic dynamics and the system’s adaptive capacity. The second relevant assumption is that of agency: Following it, structure does not determine actors, but creates their scope of action – within this scope, actors act purposively and self-consciously and thereby both reproduce and transform the structures “in interactive responses to problems posed by changing (...) situations” (Emirbayer/Mische 1998: 970, Wendt 1987: 337-338). Accordingly, the actors are

not passively subjected to regulatory measures, but react to them within their scope of action as well as they might attempt to re-broaden this scope of action.

A combination of these two assumptions with the two effects of norms identified above creates a matrix that serves two purposes: being a systematizing tool, it makes it possible to integrate some categories of unintended effects of regulation already identified by the literature and, being a heuristic tool, it makes it possible to transfer them to international norms. Thus, without claiming to be all-inclusive, in the following I discuss four types of unintended effects: permissive effects, opportunity costs, misuse of norms, and shifting/substitution/evasion.

ontological assumptions	effects of norms	
	<i>constitutive</i>	<i>regulative</i>
<i>system complexity</i>	1) permissive effects	2) opportunity costs
<i>agency</i>	3) misuse of norms	4) shifting/substitution/evasion

Unintended effects of international norms

### 1) Permissive effects

Permissive effects were introduced by Nina Tannenwald in her study on the nuclear taboo, where she notes that “norms have multiple effects and may be applied in contradictory ways” (Tannenwald 1999: 461) and suggests permissive effects to be a subset of constitutive effects (Tannenwald 1999: 437). In her explanation of what she refers to with the term “permissive effects”, she distinguishes their regulative and constitutive components: As a regulative effect, she considers particularly powerful norms to divert the attention from other problems (Tannenwald 1999: 437, Tannenwald 2007: 47). As a constitutive effect, she points to the fact that every demarcation not only defines what is within its limits but also what is outside them by stating that “one can never constitute only one half of a dichotomy” (Tannenwald 2007: 47). I suggest to disaggregate Tannenwald’s concept of permissive effects and to interpret its regulative dimension as opportunity costs (see below) while limiting the term “permissive effects” to the constitutive aspect. Hence, I define permissive effects more narrowly than Tannenwald as the inevitable, yet unintended, opening of a space of what is allowed and legitimate accompanying every prohibition. Tannenwald (2007: 47) explains what this means using the example of weapons: “If a defining characteristic of weapons of mass destruction is that they cannot be used, then (at least implicitly) a defining feature of conventional weapons is that they can.” Thus, non-use norms for certain weapons necessarily mean “the legitimization of other forms of destruction” (Tannenwald 2007: 317), which are “quite terrifying in themselves” (Tannenwald 1999: 461).

## 2) Opportunity costs

According to an economic definition, opportunity costs indicate costs that arise because resources are not invested in those opportunities promising the highest profit (Pindyck/Rubinfeld 2001: 204). Thus, they are not so much costs in the narrow sense but rather losses arising out of unrealized gains. Broadly speaking, opportunity costs occur because under the condition of scarce (financial, material or temporal) resources the decision for one option might necessitate forgoing another. With regard to regulation, not only financial and material resources necessary for regulatory efforts matter, but also resources such as absorption capacities and attention spans of the public need to be taken into account. Since regulatory efforts such as norm-setting require an increase in public awareness for a certain problem (for which the norm is the solution) (Finnemore/Sikkink 1998: 897), the concentration on this particular problem may result in decreased attention for others (Cho/Salmon 2007: 304). Nina Tannenwald explains:

*„the way norms – particularly taboos – by serving as focal points, selectively divert our normative gaze. By (...) drawing our attention to associated normative injunctions, they may obscure other “facts” about the world and shield other practices from attention (Tannenwald 1999: 437, emphasis added).*

This diversion of attention may lead to a “shift [of] governance resources away from other types of actions” (Tannenwald 2007: 47). These opportunity costs seem particularly problematic in light of the argument made by Stephen Hilgartner and Charles L. Bosk (1988: 53-54, 70): The authors consider social and political problems that receive public attention and attract governance resources not necessarily the most urgent ones. Instead, they emphasize that all problems are collectively defined and the extent of the harm alone cannot explain why some issues become the object of political and public attention while the others do not. To sum up, opportunity costs arise as side effects of regulation efforts and highlight the problem that while public attention is concentrated on a limited number of problems, other problems remain unsolved and even unnoticed. At this point, two methodological problems have already become evident: First, every action unavoidably produces an infinite number of opportunity costs. Second, assessing or even measuring the opportunity costs of regulation is much more difficult than to do so with (at least some) economic decisions.

## 3) Misuse of norms

The two unintended effects presented so far have been systemic in character, as they occur automatically, without agency. In contrast, the effects presented in the following are produced by actors in reaction to regulation efforts. For the first of these effects I chose the label “misuse of norms” because it is self-explanatory, as it simply stands for the possibility to apply the norm in a way that deviates from its intent. I consider this effect to have rather a constitutive than a regulative dimension for two reasons: First, what matters here is the constitutive power of

norms that I have defined above as their capacity to create meanings. Second, here I am drawing on the function of norms as communication devices that Friedrich V. Kratochwil (1991: 30-34) has outlined: According to him, norms enable communication by creating a discursive space where the actors can justify their actions and “sustain a “discourse” on their grievances” (Kratochwil 1991: 70, see also Zehfuss 2002: 17). Furthermore, I agree with Antje Wiener (2004: 191) who draws our attention to the contestedness of international norms, which she considers to have a dual quality – that is, to be stable social facts guiding the behavior of actors on the one hand, and to be subjected to the actors’ interpretations, thus being flexible and reflexive, on the other. Put differently, how actors interpret the norm’s content and which conclusions they deduce for their behavior, may vary depending on the context of the action and involve potential for conflict (Wiener 2007: 62-65). To sum up, the effect I have in mind here may be defined as follows: By maneuvering within the interpretative space provided by international norms and ascribing meanings to other actors, objects and actions, the actors may misuse norms as justifications for actions that are beyond the norm’s intent.

#### 4) Shifting, substitution and evasion

Shifting and substitution occur in response to constraints imposed by regulatory measures on the actors – the latter try to bypass the restrictions by resorting to other activities (shifting) or objects (substitution):

“Because only some activities are constrained, behavior is likely to move in unanticipated directions, especially because while the purpose of regulation is to block actors’ paths, actors will seek ways around them.” (Jervis 1997: 73)

These effects are prominently described in some studies dealing with the effects of prohibition and the raising of the minimum legal drinking age (Jones Ringold 2002): Beyond other unintended effects such as the evolution of a black market, it has been pointed out that consumers have switched to other drugs such as marihuana. John DiNardo and Thomas Lemieux (1992: 3) picture a consumer striving to fulfill his needs, who can choose between several functional equivalents (Merton 1968: 106). In a measure, permissive effects described above are a prerequisite for substitution and shifting, since the latter occur within the scope that is constituted as and/or remains legitimate. The metaphor of a balloon accurately describes the phenomenon that regulation cannot occur without gaps, to which the demand is directed:

„This inevitable spillover of unsatisfied demand is sometimes called the “balloon principle”. Just as squeezing an inflated balloon displaces gas to the parts of the balloon that one’s hands do not (and cannot) simultaneously grasp, so disallowing certain transactions transfers demand pressures to other markets.” (Kane 1977: 64)

While so far, the actors' evasive reactions rather seem motivated rationally, the psychological reactance theory offers other mechanisms that might motivate the actors resistance to follow regulatory measures: Assuming that a set of courses of action is available to the actors, Jack W. Brehm (1966: 51) considers the elimination of one (or several) of these options as a threat to the actor's freedom. Thus, beyond the loss of a means to fulfill one's needs – which is a primary effect of intervention – the loss of freedom, as a secondary effect, frustrates the actor and causes a psychological state called reactance. Actors experiencing reactance try to re-gain their freedom:

“Psychological reactance is conceived as a motivational state directed toward the re-establishment of the free behaviors which have been eliminated or threatened with elimination. Generally, then, a person who experiences reactance will be motivated to attempt to regain the loss or threatened freedoms by whatever methods are available and appropriate” (Brehm 1966: 9).

Brehm distinguishes three possible attempts to re-establish the freedom: Disregarding the provisions of the interventionist measure, resorting to alternatives (as described above) and urging others to disobey (Brehm 1966: 10-11, 119). If reactance is very strong, it might even result in actions that are the exact opposite of what is required by the regulatory effort – in such cases, the “boomerang effect” occurs (Cho/Salmon 2007: 295, Jones Ringold 2002: 41). Furthermore, a prohibition may itself be an incentive for non-compliance since it can render the prohibited action more attractive, as Sigmund Freud already knew.

Although these mechanisms have been observed in individual actors, I reckon that it is plausible to assume that, at least to a certain extent, they will apply to collective actors as well – in fact, the whole literature on international norms is based on models originally depicting the relationship between individuals and society. Consequently, assuming that actors subject to international norms also perceive themselves to have certain needs, it is plausible to expect them to search for alternatives if a certain practice is regulated by a norm and to try to circumvent compliance with the norm.

#### The causal relationship between norms and their effects

Before I continue with empirical illustrations of the effects described so far, a clarification is due concerning what kind of causal relationship between norms and their effects I assume. In the literature on international norms, there is a general tendency to reject the notion of causality of norms (e.g. Kratochwil/Ruggie 1986: 767) or to limit them to permissive conditions of action as opposed to determining action (Finnemore 1996: 158): “Although rules and norms influence human behavior fundamentally, they do not determine it” (Zehfuss 2002: 17). This renunciation of a deterministic causality is as common as obsolete, since there is widespread consensus that in the social world, hardly any deterministic

relationships exist. Instead, a probabilistic notion of causality is regarded as more adequate to depict the relations between different factors; meaning that one factor increases the probability of the occurrence of the other, without necessarily leading to it. While Friedrich Kratochwil (1991: 100) also doubts that a probabilistic interpretation is adequate to capture the different ways in which norms matter, I do not see the need to opt for one single concept of causality. Rather, acknowledging different effects of norms necessarily requires a pluralistic view on causality: Following Milja Kurki's scientific realist view, I consider as causes those factors possessing the ability to "make things happen, [to] bring about effects" (Kurki 2007: 365) and as a causal relationship the relationship between two (or more) factors *influencing* each other. This influence may take different forms – whether it is probabilistic, enabling or catalyzing, to name just a few,<sup>10</sup> is not an ontological, but an empirical question that will be answered differently depending on the constellation of factors under consideration. With regard to the relationship between norms and their effects, I consider the distinction between causal conditions and enabling conditions as instructive:

- With regard to their regulative effects, norms can be conceptualized as probabilistic causal conditions, assuming that the existence of a norm increases (if the norm is a prescription) or decreases (if the norm is a proscription) of a certain behavior *that was however possible without the existence of a norm*. Norms can be conceptualized as enabling conditions, assuming that the existence of a norm makes possible a certain behavior *without leading to it*.
- With regard to constitutive effects, norms can be conceptualized as enabling conditions since they create identities and categories that enable action and bring actors into being.

## **EMPIRICAL ILLUSTRATIONS: UNINTENDED EFFECTS OF THE INTERNATIONAL HUMANITARIAN LAW**

The task of the following part is to demonstrate the empirical relevance of the argument by showing 1) that the effects identified in the previous section indeed occur and 2) what is problematic about them. Due to the multitude of international norms existing in different policy fields and the sheer ubiquity of conceivable unintended effects, I face an abundance of possible cases to choose from. To mitigate this problem, I decided to select all cases from one policy field, namely the field of International Humanitarian Law. The focus on IHL is

<sup>10</sup> Critical realists list a range of verbs for them: „To ask for the cause of something is to ask what ‘makes it happen’, what ‘produces’, ‘generates’, ‘creates’ or ‘determines’ it, or, more weakly, what ‘enables’ or ‘leads to it’” (Sayer 1992: 104); „In our everyday language we use the notion of cause in a much wider sense (...). We also say that various ‘forces’ and ‘factors’, for example, media representations, capitalist structures or political ideologies, ‘have consequences’ in world politics. We also, arguably, imply causal connections when we talk of things, ideas or people as ‘influencing’, ‘producing’, ‘constraining’, ‘enabling’ or ‘shaping’ courses of events” (Kurki 2008: 138).



warranted for several reasons: Firstly, while reducing the number of possible cases, this sector of international law still consists of a variety of different norms. Hence, it seems to be a promising field of study, because it offers the opportunity both to explore all effects under consideration and to explore different norms. Secondly, its subject – the use of violence in armed conflict – is at the core of interest to IR in general as it touches questions of security of states. In particular for the students of international norms, IHL has been an important field of research: Precisely because of their security dimension, IHL norms have been regarded as belonging to “high politics” and thus, being “hard cases” for the research on norms – yet, several studies have convincingly demonstrated the explanatory power of norm-theoretical approaches even in the field of security.<sup>11</sup> Thirdly, apart from its theoretical relevance, IHL is a dynamic policy field, where some prominent normative developments, such as the Ottawa and the Oslo process, occurred recently, and which is under constant challenge due to the transformation of violent conflict – both in technical and strategic terms as well as of its rationalities and actors.

The selection of concrete cases out of this policy field is motivated by two criteria: First, in each case, one of the unintended effects of interest must be obvious, and second, the effects should preferably be produced by different norms. As becomes clear, the cases are selected based neither solely on the independent variable (the norm) nor on the dependent variable (the effect), but rather on the basis of apparent linkages between both. This selection strategy is in line with John Gerring’s (2007: 43) explanation that

“few studies are innocently Y- or X-centered. Researchers usually have some presuppositions about what causes Y or about what X causes. In most circumstances, the researcher is well advised to strive for a more fully elaborated hypothesis, one that encompasses both sides of the causal equation.”

So what is at the center of interest is the assumed causal relationship between the norm and an observation that I postulate to be its unintended effect, instead of a broad exploration of the effects of a norm, which would correspond to an X-centered design or a comprehensive explanation of a certain observation, which would correspond to a Y-centered design. In the following, I briefly describe three examples of unintended effects,<sup>12</sup> namely

- the acceptance of soldiers as legitimate targets as a permissive effect of the prohibition against targeting civilians;
- the failure to prohibit cluster munitions in the 1970s as opportunity costs of the prohibition of incendiary weapons;

<sup>11</sup> E.g. Price/Tannenwald 1996, Price 1998, Farrell 2001, Tannenwald 2007.

<sup>12</sup> I cannot and do not claim to have selected the following examples systematically by identifying those cases best suitable for this project compared to other cases – rather, I admit that other cases might be not less suitable, too, or, to put it differently, that every case is as good as the other to illustrate my point.

- the development of alternative weapons as a substitution effect of the prohibition of anti-personnel (AP) landmines.

In addition, I intend to study the legitimization of targeted killings as an example for the misuse of the norm prohibiting targeting civilians – in this paper, however, I leave it out for reasons of space.

		types of unintended effects	cases	
			norm	unintended effect
constitutive	system	1) permissive effect	prohibition against targeting civilians	definition of soldiers as legitimate targets
	agency	3) misuse of norms	prohibition against targeting civilians	legitimation of targeted killings
regulative	system	2) opportunity costs	prohibition of incendiary weapons	non-prohibition of cluster munitions (in the 1970s)
	agency	4) substitution	prohibition of AP landmines	development of alternatives to AP landmines

Empirical examples of unintended effects

#### *Permissive effect: soldiers as legitimate targets*

The principle of distinction between civilians and combatants is an essential principle of International Humanitarian Law that is laid down in all its main documents.<sup>13</sup> The basis of this principle is provided by the concept of law that the Genevan philosopher Jean-Jacques Rousseau outlined in the *Contrat Social*: According to him, war is not a relation between men and men, but between State and State, why the right to kill is given only while the defenders of the enemy State are bearing arms (quoted in Greenwood 2008: 19). The parties are allowed to attack each other because they are mutually threatening each other. From this principle, the prohibition of targeting civilians in armed conflicts is derived: (unarmed) civilians must be granted immunity, since they are not threatening the enemy.

Obviously, this fundamental classification of individuals as civilians or combatants validates Nina Tannenwald's remark about the impossibility to constitute only one half of a dichotomy, quoted above. Consequently, the corresponding norm produces a permissive effect: On the other side of the powerful and unquestioned prohibition of targeting civilians stands the equally powerful and unquestioned belief that is legitimate to kill soldiers in war. While one group of individuals is constructed as innocent and worthy of protection, the other is constructed as an attackable target, both in legal and moral terms.

<sup>13</sup> Articles 22 and 23 of the Lieber Code (1863), in the preamble of the St. Petersburg Declaration (1868), implicitly in Article 25 of the Hague Regulations (1907), and in articles 48, 51(2) and 52(2) of the Additional Protocol I (1977) to the Geneva Conventions of 1949.

Considered a violation of human dignity elsewhere,<sup>14</sup> the balancing of one life against another is institutionalized in this norm. The separate listing of civilian and military casualties in the media confers normality to the death of soldiers – as if death in war is a problem only if it hits the wrong person.<sup>15</sup>

So while the principle of distinction and the corresponding norm are surely motivated by humanitarian considerations and aimed at limiting the suffering in war, the described permissive effect is only a precondition for a larger unintended, but unavoidable effect: The protection of civilians, which comes at the price of offering soldiers as legitimate targets, makes war possible – since without targets to kill, war cannot exist. Furthermore, the notion of legitimate and illegitimate killing legitimizes the practice of war itself – if, according to Theodor Adorno's famous aphorism, "there is no right life in the wrong life", then defining what is right in war implies that war itself is not wrong.

#### *Opportunity costs: how napalm edged away cluster bombs*

While the norm-setting process, aiming at a prohibition of cluster munitions had been initiated as early as the 1970s, it was only in May 2008 that the Convention on Cluster Munitions was adopted. Taking up the concept of opportunity costs as defined above, I argue that in the seventies, the stigmatization of napalm produced such costs in form of the failure to prohibit cluster munitions, because napalm absorbed public attention and thus, shielded cluster munitions from criticism.

Napalm has played a threefold role with regard to cluster munitions: First, the public criticism related to the use of napalm had a warning effect – due to their experience of how restricting the "world opinion" can be, the military decision-makers were anxious to avoid any publicity when the employment of cluster munitions had been authorized (Krepon 1977: 600, Prokosch 1995: 99-100). Secondly, the public efforts to stigmatize napalm had a permissive effect since the US military used the diverted attention to "quietly introduce [...] cluster bombs into the war" (McDonnell 2002: 41) and to maintain their image as absolutely conventional, standard weapons (Krepon 1977: 600). And thirdly, and these are the opportunity costs, while the public attention was absorbed by the terrifying consequences of the use of napalm, the efforts to ban cluster munitions failed.

<sup>14</sup> For example, the German Federal Constitutional Court in 2006 declared a law to be in breach of German constitution, which allowed to shoot down airplanes captured by terrorists because this balancing of life against life would violate the human dignity of the airplane's passengers by reducing them to mere objects (Hörnle 2007: 605-606).

<sup>15</sup> Elizabeth Dauphinee (2008: 51) makes a similar argument with regard to war crimes tribunals: "In effecting the excision of the war criminal from the realm of legitimate war-making agents, the war crimes trial actually assists in the tacit dismissal of most death and injury in the context of war as acceptable and, indeed, necessary. The war crimes trial thus produces a conceptual hierarchy along which individual deaths are arrayed and narrated as more and less meaningful."

This happened, although humanitarian organizations had succeeded to put cluster munitions on the international agenda, the US secrecy efforts notwithstanding, by making public the large-scale use of these weapons against Vietnam and Laos by the US Air Force. As part of a larger effort to prohibit conventional weapons which violate basic IHL principles (discriminating between combatants and civilians as well as avoiding unnecessary suffering), cluster munitions – together with incendiary weapons and anti-personnel landmines, inter alia – came under scrutiny in the newly established ad hoc Committee on Conventional Weapons and the accompanying conferences of governmental experts (Mathews 2001: 993-994). However, the Convention on Prohibitions or Restrictions on the Use of Certain Conventional Weapons Which May be Deemed to be Excessively Injurious or to Have Indiscriminate Effects (briefly Convention on Certain Conventional Weapons, CCW) that resulted from these consultations, neither included any provisions on fragmentation weapons in general nor on cluster munitions in particular – while the Additional Protocol III prohibited the use of incendiary weapons (though against civilian population only). Surely, other factors such as an ineffective framing and missing precedents also contributed to the failure (see Rosert 2009: 14-16). Yet, I suggest that one explanation for why the public focus on cluster munitions vanished soon is its overlap with the moral outrage over the use of napalm bombs. While at that time, the nowadays well-known and visualized long-term effects of cluster munitions were hardly present in the public awareness, the horrible effects of napalm were effectively accentuated with pictures – most prominent being the one of the Vietnamese photographer Nick Ut showing severely burned fleeing children. Thus, compared to incendiary weapons, the “public outcry over cluster bombs was neither as sustained nor were there equally graphic images in the press showing the effects of cluster bombs” (Wiebe 2003: 96).

#### *Substitution: developing alternatives to AP landmines*

The Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction (also: the Mine Ban Treaty or the Ottawa Treaty), adopted in 1997, is one of the most effective arms control treaties, having almost halted the use, the production of and the trade in anti-personnel mines, clearing millions of landmines and giving assistance to many landmine victims. However, while the treaty has an exceptional compliance record, even of its non-parties, it has stimulated technological innovation in the field of conventional arms, thus leading to what I have defined as a substitution effect above: Both its non-signatories (e.g. China, India, Pakistan, Russia and the US), who had declared to be unable to sign the treaty in absence of alternatives to AP landmines, and some of the signatories (e.g. Australia, Canada, France, Germany, Japan and the UK) have either announced the need for or have actively

been seeking to find alternative means providing the same capabilities for warfighting as AP landmines (Landmine Action 2001: 115-116, NATO 2003: iii).<sup>16</sup>

Thus, several programs searching for substitutes for landmines were initiated, both multilateral as the one of the NATO Research and Technology Organization, but also national as the two US programs NSD-A (Non-Self Destruct Alternative) and RADAM (Remote Area Denial Artillery Munition), or the one of the Canadian Centre for Mine-Action Technologies (National Research Council 2001: 115). Mainly two categories of new weapons are under consideration: lethal, but not victim-activated such as the SPIDER system<sup>17</sup> or victim-activated, but non-lethal such as Taser Area Denial Devices.<sup>18</sup>

While generally approving the efforts to develop substitutes for non-discriminatory anti-personnel mines, humanitarian organizations have, however, critically commented on the concrete technologies under consideration for several reasons. First of all, they are perceived to draw a distinction between acceptable, since technologically advanced, mines on the one hand and to blur the distinction between mines and other weapons on the other. Furthermore, several systems have been labeled alternatives to APL while including similar components and thus, capable to produce landmine-like effects. Doubts also exist whether man-in-the-loop systems can really pose a reliable solution to the problem of discrimination, since it may not always be possible for the commander operating from remote to clearly identify and classify the intruding object. The focus on non-lethal weapons is subject to criticism as well: the label “non-lethal” is not based on independent criteria but is usually assigned by the manufacturers of the weapons and meanwhile, several examples are known where so-called non-lethal weapons have caused lethal effects. Moreover, the doctrine behind these weapons explicitly includes civilians as their targets, who, even if they are not killed, are harmed physically and psychically.<sup>19</sup>

## CONCLUSION

This paper is an attempt to direct attention to a category of effects of norms that have not received much consideration so far. Building both on the literature on unintended effects and on international norms, four unintended effects of norms

<sup>16</sup> The landmine polices of the respective countries are documented here: [http://www.the-monitor.org/index.php/cp/display/region\\_profiles/](http://www.the-monitor.org/index.php/cp/display/region_profiles/), accessed on 3.3.2011.

<sup>17</sup> This system consists of a web of tripwires across an area, hand-emplaced munitions and a control unit monitoring them – once the operator receives the signal that a tripwire has been touched, the munitions can be activated, if the object has been identified as an enemy force (Landmine Action 2001: 41, Landmine Monitor 2008).

<sup>18</sup> While this device is supposed to incapacitate the victim with electroshocks, other alternatives are for example calmatives or obscurants that are released from a devise after it is stepped on, entanglements such as slippery substances and nets, acoustic mines issuing sounds to incapacitate the victim (Landmine Action 2001: 8).

<sup>19</sup> See Feigebaum 2000, Human Rights Watch 2000, 2001, 2004, Landmine Action 2001: 3-16, The Lancet 2001, Washington Post 24.09.1997.

were identified – permissive effects, opportunity costs, misuse of norms and substitution – and illustrated with examples to demonstrate the empirical relevance of the argument. In the following, I briefly address three crucial challenges that were beyond the scope of this paper but surely deserve further thought: the question of intentionality of norms, possible explanations for the emergence of unintended effects and methodological difficulties that may be expected in further research.

Intentionality, as has become clear, is a concept strongly attached to actors and agency while I have applied it to norms, which in my view rather resemble a structure. To be sure, the assumption of an intentional structure that has been made without further ado in this paper needs further consideration: Can a norm, emerging in a collective definition process, in which different actors with multiple, perhaps even unconscious intentions participate, be assumed to have an intention? Is the latter a common intersection of the actors' intentions or more than a sum of or even different from individual intentions, meaning that a norm could acquire a certain autonomous intention? And how can the intentions of norms be identified? What might prove helpful here are conceptual insights from law studies such as the "spirit of a law" and methodical tools such as legal interpretation.

Another major task concerns the explanation of the unintended effects of norms – why and how do they emerge, which causes, conditions of possibility and mechanisms can be made accountable for their emergence? While to deliver an explanation was not an objective of this paper, the concepts I used to conceptualize the effects already give some clues about the possible direction to pursue in search of an explanation: To provide a constitutive account for how the effects are possible, a closer look must be taken at the nature of norms, assuming that their properties – such as interpretability or dichotomousness – explain, why norms can produce the effects that they do. To understand how actors react to norms and to explain such puzzling ambivalences as internalizing the norm and at the same time trying to evade it, both the relationship between agency and structure as well as different actor images deserve further elaboration. To identify the mechanisms at work in the production of the effects, tracing the emergence of concrete effects also promises insights, though at a lower level of abstraction. Another important aspect that has been neglected in this paper are the linkages between the effects: As noted above, constitutive and regulative effects are tied to each other, so for an explanation of the different kinds of unintended effects it might prove insightful to explore how they are interrelated to each other.

The main methodological difficulty lies in proving the causal relationship between norms and the alleged unintended effects: To establish the link, it is necessary to demonstrate convincingly that the observation is indeed an effect of a norm, to what extent it is caused by a norm, how the norm generates the effect and what kind of causality can be attested to a given case. A minor but however

important methodological challenge concerns a more precise characterization of the effects as part of the empirical study: Do we observe side-effects or contrary effects? How do side-effects affect the effectiveness of a norm, possibly turning into contrary effects at a certain point? Have the effects been anticipated? Finally, it is important to reflect upon the political implications of this topic, discussing difficult questions such as whether unintended effects could and should be avoided and if so, how norms should be formulated to increase their intended effectiveness and to reduce the unintended effects.

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